UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

VIA ELECTRONIC MAIL
DELIVERY RECEIPT REQUESTED

Frank Tiegs, Owner
Oregon Potato Company
frank@ftiegs.com

Re: Finding of Violation
Oregon Potato Company
Pasco, Washington

Dear Mr. Tiegs:

The U.S. Environmental Protection Agency is issuing the enclosed Finding of Violation (FOV) to Oregon Potato Company (OPC or you). We find that you have violated Section 203(a)(3)(B) of the Clean Air Act (CAA), 42 U.S.C. § 7522(a)(3)(B). As summarized in the attached FOV, EPA has determined that you have sold parts or components intended for use with, or as part of, any motor vehicle engine, where a principal effect of the part or component is to bypass, defeat, or render inoperative elements of design of those engines that were installed by the original equipment manufacturer in order to comply with CAA emission standards.

We are offering you an opportunity to confer with us about the violations alleged in the FOV. The conference will give you an opportunity to present information on the specific findings of violation, any efforts you have taken to comply and the steps you will take to prevent future violations. In addition, in order to make the conference more productive, we encourage you to submit to us information responsive to the FOV prior to the conference date.

Please plan for your facility's technical and management personnel to attend the conference to discuss compliance measures and commitments. You may have an attorney represent you at this conference.

The EPA contact in this matter is Josh Hufferd. You may call him at (312) 353-6553 or email him at hufferd.joshua@epa.gov to request a conference. You should make the request within 10 calendar days following receipt of this letter. We should hold any conference within 30 calendar days following receipt of this letter.

Sincerely,

DAKOTA PRENTICE
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Nathan Frank
Chief, Air Enforcement and Compliance Assurance Section (IL/IN)

cc: Charlotte Papp, Inspector
Air & Toxics Enforcement Section
Region 10
charlotte.papp@epa.gov

John Keenan, Air Enforcement Specialist
Air & Toxics Enforcement Section
Region 10
keenan.john@epa.gov

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:	)	
	)	
Oregon Potato Company	)	**FINDING OF VIOLATION**
Pasco, Washington	)	
	)	**EPA-5-21-MOB-07**
Proceedings Pursuant to	)	
the Clean Air Act,	)	
42 U.S.C. §§ 7521 - 7554	)	
	)	

FINDING OF VIOLATION

The U.S. Environmental Protection Agency (EPA) is issuing this Finding of Violation to Oregon Potato Company (OPC or you) for violating Section 203(a)(3)(B) of the Clean Air Act (CAA), 42 U.S.C. § 7522(a)(3)(B).

Statutory and Regulatory Authority

1. Title II of the CAA was enacted to reduce air pollution from mobile sources. In enacting the CAA, Congress found, in part, that "the increasing use of motor vehicles… has resulted in mounting dangers to the public health and welfare." CAA § 101(a)(2), 42 U.S.C. § 7401(a)(2). Congress's purpose in enacting the CAA included "to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population," and "to initiate and accelerate a national research and development program to achieve the prevention and control of air pollution." CAA § 101(b)(1)–(2), 42 U.S.C. § 7401(b)(1)–(2).

2. Section 216(2) of the CAA defines "motor vehicle" as "any self-propelled vehicle designed for transporting persons or property on a street or highway." *See also* 40 C.F.R. § 85.1703 (further defining "motor vehicle").

3. EPA promulgated emission standards for particulate matter (PM), nitrogen oxides (NO_x), and other pollutants applicable to motor vehicle and motor vehicle engines, including diesel engine (diesel engine) vehicles, under Section 202 of the CAA, 42 U.S.C. § 7521. *See* the implementing regulations at 40 C.F.R. Part 86. Diesel engine emissions standards "reflect the greatest degree of emission reduction achievable through the application of [available] technology." CAA § 202(a)(3)(A)(i), 42 U.S.C. § 7521(a)(3)(A)(i).

4. Section 203(a)(1) of the CAA, 42 U.S.C. § 7522(a)(1), prohibits a manufacturer of motor vehicles or motor vehicle engines from selling a new motor vehicle or motor vehicle engine in the United States unless the motor vehicle or motor vehicle engine is covered by a certificate of conformity (COC). EPA issues COCs to motor vehicle and motor

vehicle engine manufacturers under Section 206(a) of the CAA, 42 U.S.C. § 7525(a), to certify that a particular group of motor vehicle and motor vehicle engines conform to applicable EPA requirements governing motor vehicle emissions. The COC will include, among other things, a description of the diesel engines, their emission control systems, all auxiliary emission control devices and the engine parameters monitored.

5. Diesel engine manufacturers employ many devices and elements of design to meet emission standards. "Element of design" means "any control system (i.e., computer software, electronic control system, emission control system, computer logic), and/or control system calibrations, and/or the results of systems interaction, and/or hardware items on a motor vehicle or motor vehicle engine." *See* 40 C.F.R. §§ 86.094-2 and 86.1803-01.

6. To meet the emission standards in 40 C.F.R. Part 86 and qualify for a COC, diesel engine manufacturers may utilize control devices or elements of design such as Exhaust Gas Recirculation (EGR), Clean Gas Induction (CGI), Diesel Oxidation Catalyst (DOC), Diesel Particulate Filter (DPF), and/or Selective Catalytic Reduction (SCR).

7. Diesel engine vehicle manufacturers may also employ engine fueling strategies, such as retarded fuel injection timing, as a primary element of design to limit emissions of NO_x. *See* 59 Fed. Reg. 23,264 at 23,418 (May 5, 1994) ("[I]njection timing has a very significant impact on NO_x emission rates, with advanced timing settings being associated with higher NO_x …").

8. Modern diesel engine vehicles are equipped with electronic control modules (ECMs). ECMs continuously monitor engine and other operating parameters and control emission control devices and elements of design, such as the EGR/CGI, DOC, DPF, and SCR systems and the engine fueling strategy.

9. Under Section 202(m) of the CAA, 42 U.S.C. § 7521(m), EPA promulgated regulations for motor vehicles manufactured after 2007 that require diesel engine motor vehicles to have numerous devices or elements of design that, working together, can detect problems with the vehicle's emission-related systems, alert drivers to these problems, and store electronically-generated malfunction information. 40 C.F.R. §§ 86.005-17, 86.007-17, 86.1806-05. These devices or elements of design are referred to as "onboard diagnostic systems" or "OBD" systems.

10. Section 203(a)(3)(B) of the CAA prohibits "any person to manufacture or sell, or offer to sell, or install, any part or component intended for use with, or as part of, any motor vehicle or motor vehicle engine, where a principal effect of the part or component is to bypass, defeat, or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under [Title II of the CAA], and where the person knows or should know that such part or component is being offered for sale or installed for such use or put to such use." These parts or components are also referred to as "defeat devices."

11. The CAA does not exempt "off-road use only" or "competition only" motor vehicles or motor vehicle engines. The definitions for motor vehicle at CAA § 216(2); 42 U.S.C. § 7550(2) and 40 C.F.R. § 85.1703 make no exemption for motor vehicles or motor vehicle engines used for competition. More generally, these definitions are based on vehicle attributes (e.g., ability to travel over 25 miles per hour, lack of features that render street use unsafe) and make no exemption for vehicles based on their use.

Background

12. OPC is an agricultural company owned by Frank Tiegs located at 6610 West Court Street, Pasco, Washington.

13. Greenridge Farming, Inc. (GRF) is a trucking company owned by Frank Tiegs located at 6610 West Court Street, Pasco.

14. OPC is a "person," as defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

15. On May 21, 2020, EPA issued a request for information (May 2020 Request) to OPC pursuant to Section 208 of the CAA, 42 U.S.C. § 7542, requesting documents related to all heavy-duty diesel engine (HDDE)[1] motor vehicles owned, operated, and/or leased by OPC and the purchase of, and/or installation of, parts, components, and services which bypass, defeat, or render inoperative any emission control component, element of design, or emissions related part or component for the period from January 1, 2017 to the date of receipt of the May 2020 Request.

16. Between July 22, 2020 and September 21, 2020, OPC provided EPA with its initial and supplemental responses to the May 2020 Request. EPA received additional records between October 28, 2020 and April 6, 2021 from GRF which included documents relevant to OPC.

17. EPA received shipping records, invoices, and reimbursement receipts indicating that between approximately December 14, 2018 and July 2, 2020, OPC sent and received ECMs, belonging to GRF, to and from Diesel Spec Inc. (DSI). At least two of the reimbursement receipts state, "Reprogram ECM for truck for emissions delete purposes."

18. The records also indicate that OPC purchased numerous EGR block plates and at least 20 DSI tunes, which DSI installed onto the ECMs. OPC then sold, via reimbursement, these EGR block plates and DSI tunes, to GRF.

19. Documents show that GRF installed at least 20 DSI-tuned ECMs onto HDDE motor vehicles, often with EGR block plates, and removed or rendered inoperative, one or more emission control devices or elements of design, including but not limited to, the EGR, DOC, and/or DPF.

[1] The May 2020 Request defined HDDE motor vehicles as diesel-engine motor vehicles with a gross vehicle weight rating greater than 8,500 pounds.

Violations

20. The parts and/or components manufactured by Diesel Spec, Inc. and sold by OPC to GRF were intended for "motor vehicles" as defined by Section 216(2) of the CAA, 42 U.S.C. § 7550(2), and were designed for use on makes and models of diesel-engine motor vehicles for which their respective manufacturers have obtained COCs establishing compliance with CAA emissions standards.

21. The parts and/or components manufactured by Diesel Spec, Inc. and sold by OPC, bypass, defeat, and/or render inoperative elements of design (e.g., emissions-related elements of the ECM) installed on or in a motor vehicle or motor vehicle engine and allow for the removal or rendering inoperative of emission control devices (i.e., EGR/CGI, DOC, DPF, and/or SCR systems(s)) without illuminating a malfunction indicator lamp in the vehicle's OBD system, prompting any diagnostic trouble code in the OBD system, or causing any engine derating due to the removal or disabling of an emission control device. These parts and/or components are defeat devices.

22. Between approximately December 14, 2018 and July 2, 2020, OPC violated Section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B), by selling numerous parts and components, intended for use with, or as part of, a motor vehicle or motor vehicle engine, where a principal effect of these parts and components was to bypass, defeat, or render inoperative elements of the HDDEs' design that control emissions, such as the EGR/CGI, DOC, DPF, SCR, OBD systems and/or other elements of design on motor vehicles and motor vehicle engines that were in compliance with Title II of the CAA, where OPC knew or should have known that such part or component was being offered for sale or installed for such use or put to such use of regulated air pollutants.

Environmental Impact of Violations

23. These violations resulted in excess emissions of PM, NO_x, hydrocarbons, and other air pollutants and contribute to increased ground level ozone concentrations. PM, especially fine particulates containing microscopic solids or liquid droplets, can get deep into the lungs and cause serious health problems, including decreased lung function; chronic bronchitis; and aggravated asthma. Additionally, current scientific evidence links short-term NO_x exposures, ranging from 30 minutes to 24 hours, with adverse respiratory effects including airway inflammation in healthy people and increased respiratory symptoms in people with asthma. Exposure to ground-level ozone can also reduce lung function and inflame lung tissue; repeated exposure may permanently scar lung tissue.

Enforcement Authority

24. Any person who violates Section 203(a)(3)(B) of the CAA, 42 U.S.C. § 7522(a)(3)(B) is subject to an injunction under Section 204 of the CAA, 42 U.S.C. § 7523, and a civil penalty of up to $4,876 for each violation under Section 205(a) of the CAA, 42 U.S.C. § 7524(a), and 40 C.F.R. § 19.4, Table 1.

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Michael D. Harris
Division Director
Enforcement and Compliance Assurance Division